

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General
JEFFREY S. ROBINS
Deputy Director

SARAH B. FABIAN
NICOLE N. MURLEY
Senior Litigation Counsel

U.S. Department of Justice
Office of Immigration Litigation
PO Box 868, Ben Franklin Station
Washington, D.C. 20044
Nicole.Murley@usdoj.gov
Telephone: (202) 616-0473
Fax: (202) 616-8962

Attorneys for Defendants

Amy P. Lally (SBN 198555)
alally@sidley.com
Ellyce R. Cooper (SBN 204453)
ecooper@sidley.com
SIDLEY AUSTIN LLP
1999 Avenue of the Stars, 17th Floor
Los Angeles, CA 90067
Telephone: +1 310 595 9522
Facsimile: +1 310 595 9501

Mark Rosenbaum (SBN 59940)
mrosenbaum@publiccounsel.org
Judy London (SBN 149431)
jlondon@publiccounsel.org
Talía Inlender (SBN 253796)
tinlender@publiccounsel.org
Amanda Savage (SBN325996)
asavage@publiccounsel.org
PUBLIC COUNSEL
610 S. Ardmore Avenue
Los Angeles, CA 90005
Telephone: +1 213 385-2977
Facsimile: +1 213 385-9089

*Attorneys for Plaintiffs
Additional Counsel on next page*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Ms. J.P., et al.

Plaintiffs,

v.

**Jeffrey A. Rosen,
Acting U.S. Attorney General, et al.,**

Defendants.

) **Case No. 2:18-cv-6081-JAK-SK**

)

) **JOINT STATUS REPORT**

)

) Judge: John A. Kronstadt

) Magistrate Judge: Steven Kim

) Hearing Date: n/a

)

)

)

)

1 Carter G. Phillips*
2 cphillips@sidley.com
3 Jennifer J. Clark*
4 jennifer.clark@sidley.com
5 SIDLEY AUSTIN LLP
6 1501 K Street, N.W.
7 Washington, D.C. 20005
8 Telephone: +1 202 736-8000
9 Facsimile: +1 202 736-8711

Mark E. Haddad (SBN 205945)
markhadd@usc.edu
Part-time Lecturer in Law
USC Gould School of Law**
University of Southern California
699 Exposition Boulevard
Los Angeles, CA 90089
Telephone: +1 213 675-5957

7 Timothy Payne*
8 tpayne@sidley.com
9 Kevin Fee*
10 kfee@sidley.com
11 Daniel Craig*
12 dcraig@sidley.com
13 SIDLEY AUSTIN LLP
14 One South Dearborn Street
15 Chicago, IL 60603
16 Telephone: +1 312 853-7000
17 Facsimile: +1 312 853-7036

Luis Cortes Romero (SBN 310852)
lcortes@ia-lc.com
Alma L. David (SBN 257676)
adavid@ia-lc.com
Immigrant Advocacy &
Litigation Center, PLLC
19309 68th Avenue South, Suite R-102
Kent, WA 98032
Telephone: +1 253 872-4730
Facsimile: +1 253 237-1591

15 Sean A. Commons (SBN 217603)
16 scommons@sidley.com
17 SIDLEY AUSTIN LLP
18 555 West Fifth Street
19 Los Angeles, CA 90013
20 Telephone: +1 213 896-6000
21 Facsimile: +1 213 896-6600

21 *Admitted pro hac vice

22 ** Institution listed for identification purposes only

1 The Court ordered the parties to file a joint status report (JSR) on or before January
2 4, 2021 to address the status of the case. On January 4, 2021, the parties jointly stipulated
3 to advance that deadline to January 6, 2021, Dkt. 306, and that stipulation remains
4 pending with the Court. The parties submit this joint status report in accordance with the
5 Court's instruction.

6 On March 11, 2020, Defendant U.S. Department of Health and Human Services
7 ("HHS") finalized a multimillion-dollar sole-source contract with Seneca Family of
8 Agencies ("Seneca"), a qualified non-profit organization, for the purpose of
9 implementing the preliminary injunction as to the Released Subclass. The initial contract
10 between HHS and Seneca was set to terminate on January 10, 2021. On March 24, 2020,
11 the Court granted the parties' stipulation staying this litigation—including pending
12 discovery—through January 10, 2021. ECF No. 298.

13 As the parties have previously told the Court, the parties agree that the completion
14 of the Seneca contract, along with the provision of relief to the Custody Subclass by
15 Defendant the U.S. Department of Homeland Security ("DHS"), and its component U.S.
16 Immigration and Customs Enforcement ("ICE"), is expected to fully implement the
17 preliminary injunction and provide the relief ordered by the preliminary injunction to
18 Detained Subclass members and Released Subclass members. *See* Joint Status Report,
19 March 24, 2020, ECF No. 297 at 3. For that reason, the parties agreed that a stay of the
20 litigation was warranted while relief was being provided by Seneca under the contract
21 between HHS and Seneca. *Id.*

22 Defendants have submitted status reports providing updates on Defendants'
23 progress in providing the injunctive relief to class members on May 22, July 21,
24 September 21, and November 20, 2020. ECF Nos. 299, 301, 303, 305. As Defendants'
25 reports indicate, relief is being provided to both subclasses consistent with the Court's

1 preliminary injunction. Although Defendants initially indicated that the provision of
2 relief would likely be completed on or before January 10, 2021—the present termination
3 date of the contract between HHS and Seneca—Seneca asserts that the process has been
4 slowed by the COVID-19 pandemic. Due to the unforeseen circumstances of the COVID-
5 19 pandemic, Seneca requested a six-month, zero-dollar extension of the contract with
6 HHS in July 2020. On July 9, 2020, Plaintiffs informed Defendants by email that if the
7 contract between HHS and Seneca was extended, Plaintiffs would agree to a further stay
8 of the litigation for the length of the contract extension and on the terms of the initial stay.
9 Defendants aver that the contract extension process has involved a lengthy administrative
10 approval process within HHS. Defendants informed Plaintiffs on January 5, 2021 that the
11 process has now been completed and the extension until July 10, 2021 was approved on
12 January 5, 2021.

13 **I. Plaintiffs' Position**

14 The Court has the right and obligation to ensure that its Preliminary Injunction is
15 being properly implemented. Plaintiffs' counsel too have an obligation to the class to
16 ensure that the Preliminary Injunction is being implemented. Most importantly, however,
17 Plaintiffs believe that all parties – this Court, Plaintiffs, and Defendants – have a strong
18 interest in ensuring that Plaintiffs receive the mental health care that they so desperately
19 need.

20 Plaintiffs' counsel recently became aware that Seneca seemed to have received
21 incomplete information from the Government that was hampering its work, that Seneca
22 was requesting a further extension of the contract, and that despite significant efforts by
23 Seneca, the ability to reach class members was being hampered by the COVID-19
24 pandemic.

1 On Monday December 28, 2020, Plaintiffs raised these issues to Defendants in an
2 email requesting to meet and confer.¹ At Defendants' request and to accommodate the
3 Government's schedule, Plaintiffs and Defendants had a meet and confer conference on
4 January 4, 2021. During that conference, Plaintiffs do not believe they received the
5 information necessary to fulfill their duties to the class or to enable the Court to ensure
6 its Preliminary Injunction is being fully implemented. Plaintiffs therefore believe a status
7 conference is necessary so that this Court and Plaintiffs can receive information to ensure
8 that the Preliminary Injunction is being fully implemented.

9 Plaintiffs understand that Seneca has had difficulty using what they understand to
10 be often very incomplete information provided by the Government to contact class
11 members. Plaintiffs understand that the Government may have other sources of
12 information that would be useful in contacting class members. The Government stated on
13 the January 4, 2021 meet and confer call that some of this information has very recently
14 (late December) been provided to Seneca, though it was apparently available to the
15 Government earlier than that. Plaintiffs are unclear if the information recently provided
16 to Seneca is information that the Government had available and should have provided in
17 January 2020, or at some point earlier than December 2020.

18 Plaintiffs were under the impression that the zero dollar contract extension between
19 HHS and Seneca that had been requested last summer was *a fait accompli* in July 2020;
20 Plaintiffs learned on December 28, 2020 that this was not the case and that the contract
21 extension had still not been approved. Plaintiffs learned late on January 5, 2021 that the
22 contract extension, through July, was approved. Plaintiffs also understand that Seneca
23

24
25 ¹ Defendants' statement *infra* that Plaintiffs did not provide Defendants the seven day notice required
26 by this Court's Order is consequently flatly false.

1 now estimates that due to the COVID pandemic it will need a further extension to reach
2 class members.

3 It is clear that there is great interest from class members in receiving the relief
4 mandated by this Court; once they are reached by Seneca, Plaintiffs understand that the
5 request rate of class members for services has been remarkably high. Plaintiffs believe
6 that the appropriate way to ensure that this Court's order is being properly implemented
7 is for this Court to hold a status hearing where Seneca can explain the work it has done,
8 the specific information it has, the further information it needs, and the time it thinks it
9 will need to complete its outreach. The Government at that time can also update the
10 Court on the status of Contract negotiations. Absent having this further information,
11 information that Plaintiffs would otherwise seek in discovery to ensure that the
12 Preliminary Injunction is being properly implemented, Plaintiffs cannot agree to a further
13 stay.

14 **II. Defendants' Position**

15 Defendants do not agree that a status conference is necessary, and instead submit
16 that the Court should extend the existing stay of litigation until July 10, 2021.² Under the
17 contract, Seneca is responsible for locating the Released Subclass members in the United
18 States, notifying them of the availability of mental health assessment and treatment for
19 themselves and their separated children, and determining their interest in seeking mental
20 health services. For those interested in services, Seneca refers them to SAMHSA's
21 National Child Traumatic Stress Initiative clinics and HRSA's Federally Qualified Health
22 Centers for assessment and treatment. Obtaining approval for the six month contract

23
24 ² Defendants note that Plaintiffs do not raise any issue with U.S. Immigration and Customs Enforcement
25 ("ICE")'s provision of the relief ordered by the preliminary injunction to Detained Subclass members.
While the litigation is stayed, ICE continues the process of rescreening the Custody Subclass members
and providing any necessary treatment.

1 extension requested by Seneca (the maximum allowed under the contract) required a
2 lengthy administrative process due to the nature of the contract, but the extension has
3 been approved and Seneca now has until July 10, 2021, to complete its obligations under
4 the contract. To Defendants' knowledge, the parties remain in agreement—as they
5 previously informed the Court—that the completion of the Seneca contract is expected to
6 fully implement the preliminary injunction and provide the relief ordered by the
7 preliminary injunction to Released Subclass members. There is therefore good reason for
8 the Court to extend the stay of the litigation through July 10, 2021, to allow Seneca time
9 to fulfill its obligations thereby allowing for full and complete implementation of the
10 preliminary injunction in the manner previously agreed to by the parties.

11 Plaintiffs' positions above at best present an unfounded red-herring, and at worst,
12 could improperly interfere with the government contract between HHS and Seneca. To
13 start, Plaintiffs do not explain the basis for their purported concerns that Seneca “has had
14 difficulty using what they understand to be often very incomplete information provided
15 by the Government to contact class members.” They repeatedly assert that it is “unclear”
16 whether Seneca has the information it needs, that they “understand” that Seneca needs
17 more information and that the government has information it should have provided but
18 did not, and that they were “under the impression” that the contract extension should have
19 been finalized sooner. However, they do not describe any factual details to explain how
20 they arrived at these understandings and impressions, and thus the basis for their concerns
21 is unclear.

22 Additionally, the contract between Seneca and HHS is not being overseen by this
23 Court, but is relevant here only because the parties have already agreed that its fulfillment
24 would fully implement the existing preliminary injunction. This Court should not be the
25 forum for any complaints regarding alleged breaches of the contract or concerns about

1 performance under the contract; those claims are properly addressed between Seneca and
2 HHS as parties to the contract. To the extent the contract impacts this litigation, both
3 parties were familiar with the terms of the contract when they submitted to this Court
4 their agreement that its performance would fully implement the preliminary injunction
5 and that the litigation should be stayed while this performance was completed.
6 Performance is ongoing as Seneca's contract has been extended until July 10, 2021. To
7 the extent that Plaintiffs are now asking this Court to hold a hearing to determine whether
8 there is any breach of contract or impediment to Seneca's ability to perform under the
9 contract, Defendants submit that this would be improper and premature.³ The better
10 course is for the Court to extend the stay of the litigation through July 10, 2021 to allow
11 Seneca time to fulfill its obligations under the contract.

12 To the extent that Plaintiffs are asserting that the Court's involvement is required
13 for reasons unrelated to the contract between Seneca and HHS, they have not explained
14 what those reasons are, and it is unclear what role they are asking the Court to play—or
15 what they are asking the Court to decide—at the hearing they are requesting. The
16 government submitted four status reports over the past year detailing the efforts to
17 provide the injunctive relief to class members. Not once did Plaintiffs raise concerns to
18 Defendants or to the Court about these reports, or about the manner in which Seneca was
19 carrying out the ordered relief. Nonetheless, Plaintiffs now assert that the government's
20 compliance reports that have been filed with this Court, the most recent of which was
21 filed on November 20, 2020 (Dkt. No. 305), raise concerns as to whether the Court's

22 ³ Plaintiffs' assertion that they could seek information about Seneca's performance under the contract
23 through discovery if the stay were lifted likewise is incorrect, because the contract is not the subject of
24 this litigation, and such discovery would be outside the scope of Rule 26(b). In any event, Plaintiffs
25 entirely fail to explain whether or how the information they assert that the government has failed to
provide was required to be provided under the contract, and thus fail to establish any basis for this Court
to believe a potential breach has occurred.

1 preliminary injunction is being fully implemented. None of Plaintiffs' assertions
2 regarding alleged challenges faced by Seneca—raised for the first time more than a month
3 after the most recent report was filed—are supported by, or consistent with, the reports
4 that the government has submitted. Moreover, having already agreed that performance
5 by Seneca of the contract between Seneca and HHS would constitute implementation of
6 the preliminary injunction, and considering that fulfillment of the contract by Seneca
7 remains ongoing, Plaintiffs fail to explain what violation of the Court's preliminary
8 injunction they believe has occurred. In any event, if Plaintiffs seek the Court's
9 intervention regarding Defendants' implementation of the Court's preliminary injunction,
10 then the local rules require, and the Court's orders contemplate, that the parties should
11 meet and confer at least seven days before bringing an issue to the court's attention – that
12 process has not happened here.

13 Seneca's contract with HHS has been extended to July 10, 2021, and holding a
14 hearing about Seneca's performance under the contract and the manner in which HHS
15 and Seneca are working together under the contract potentially interferes with
16 performance under the contract. Full performance is best achieved by allowing any issues
17 to be resolved through discussions between HHS and Seneca as parties to the contract,
18 and not by a collateral attack by Plaintiffs before this Court predicated on vague,
19 unsupported allegations. For all of these reasons, Defendants submit that the best course
20 of action is for the Court to extend the existing stay of litigation to July 10, 2021, and to
21 allow Seneca to continue its work under the contract implementing the Court's
22 preliminary injunction while raising with HHS any concerns that it may have. Defendants
23 will continue to provide regular status reports to Plaintiffs and the Court every sixty (60)
24 days until this process is completed, and once the third-party contract is fulfilled, and the
25 government has thereby provided the injunctive relief ordered by the Court, the parties

1 will so-notify the Court and will jointly advise the Court on how they believe the litigation
2 should proceed.

3 Dated: January 6, 2021

Respectfully Submitted,

Amy P. Lally
Sidley Austin LLP

6 By: /s/ Amy P. Lally (with permission)
7 AMY P. LALLY

8 *Attorney for Plaintiffs*

9 Dated: January 6, 2021

Respectfully Submitted

11 JEFFREY BOSSERT CLARK
12 Acting Assistant Attorney General
13 JEFFREY S. ROBINS
14 Deputy Director
15 NICOLE N. MURLEY
16 Senior Litigation Counsel

17 /s/ Sarah B. Fabian
18 SARAH B. FABIAN
19 Senior Litigation Counsel
20 U.S. Department of Justice, Civil Division
21 Office of Immigration Litigation
22 District Court Section
23 P.O. Box 868, Washington, DC 20044
24 Telephone: (202) 532-4824
25 Facsimile: (202) 616-8962
26 Sarah.B.Fabian@usdoj.gov

27 *Attorneys for Defendants*

SIGNATURE ATTESTATION

Pursuant to LR 5-4.3.4(a)(2)(i), I hereby attest that the concurrence in the filing of the document has been obtained from each of the other Signatories.

/s/ Sarah B. Fabian
Sarah B. Fabian

Attorney for Defendants

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, Sarah B. Fabian, am a citizen of the United States and am at least eighteen years of age. My business address is 450 Fifth Street, NW, Washington, D.C. 20001. I have caused service of the Joint Status Report on all counsel of record, by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically provides notice. I also served Plaintiffs' counsel by electronic mail. I declare under penalty of perjury that the foregoing is true and correct.

DATED: January 6, 2021

/s/ Sarah B. Fabian
Sarah B. Fabian